IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 25 OF 2004

Anandrao Nansaheb Suryavanshi ... Appellant

V/s

1. Mahatma Jotiram Phule Vividha Karyakari Sahakari Seva Sanstha Maryadit, Phulewadi, Kolhapur; & ors. ... Respondents

Mr. S.G. Surana for the appellant.

Mr. D.S. Sawant for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 13TH JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the 4th Addl. District Judge, Kolhapur on 30.8.2003 allowing the appeal and dismissing the plaintiff's suit for compensation and reverting the order passed by the Civil Judge, Sr.Divn., Kolhapur dated 30.9.1991 decreeing the suit for possession against the defendants 1 and 2.

2. There was a contract between the parties to develope the property of Co-operative Housing Society for which

services of the plaintiff as an Architect were engaged under the suit contract. The suit contract is Exh.69 whereunder the suit work was to be completed within two years from the date of execution of the agreement. The agreement was prepared on 22.11.1978. The work was expected to be completed within two years i.e. on 22.11.1980 and the suit has been filed by the plaintiff on 2.8.1983. The learned lower appellate Court, by reverting the finding of the lower Court has come to the conclusion that the suit is barred by law of limitation. According to the appellant, when the suit was filed on 2.8.1983, it was filed within three years from the date of completion of the said period i.e. from the date of execution of the agreement and hence the suit was within limitation. But it is clear from the record that Sec. 55 of the Limitation Act would be applicable to the present case which provided three years limit for filing of the suit for compensation for breach of any contract expressed or implied, not specially provided for elsewhere in the Limitation Act and therein the limitation started when the contract was broken. The record reveals that the contract was broken on 28.2.1979 by defendant Nos. 1 and 2 and the plaintiff was required to file the suit within three years therefrom i.e. on or before 28.2.1982. However, it is actually

filed on 2.8.1983 which is beyond the period of three years. It is apparent that the appellant wants to rely upon certain alleged oral assurances and communications made by the defendants to him, however, those cannot be taken into account in absence of cogent evidence and especially when documentary evidence is available on record. In other words, the suit is found to be barred by limitation which finding appears to have been correctly recorded by the lower Court and would brook no interference. There is no substantial question of law involved even otherwise in this appeal and thus the appeal fails and stands dismissed.

(P.V. Kakade, J.)